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*** Notices to Subscribers and Contributors will be found on page vii.

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Current Topics.

The Appearance of a Limited Company in Criminal Cases.

SECTION 33 of the Criminal Justice Act, 1925, which provides that for certain very limited purposes a corporation may be "represented" by a person other than counsel or solicitor, has led to some strange misconceptions of the law, and cases have arisen in police courts where limited companies summoned for purely summary offences, where no right to trial by jury exists, have been allowed to "appear" and plead guilty by their secretary or managing director. This, of course, is quite out of order, and unless service is duly proved so that the hearing could be supported as an *ex parte* hearing, any conviction is without jurisdiction. Perhaps the oddest view of the situation was that taken by a bench which agreed indeed that a limited company could not appear otherwise than by counsel or solicitor, but excused the irregularity in this matter by saying that they would never be able to get through their list unless they allowed it.

Tricksters ?

THE REMARKABLE credulity of the public at large has been responsible for many small "shady" money-making schemes devised by adventurous characters. One of the latest ideas takes the form of a well-dressed masked man selling on the streets for sixpence a sealed envelope said to contain a genuine bank-note and something else of value. The origin of this scheme can undoubtedly be traced to the offering for sale of genuine English £1 notes for sixpence for a wager by a man on Westminster Bridge some time ago, and many who missed a golden opportunity on that occasion fall an easy prey to the non-genuine activities of his successors. Some indignation has occasionally been expressed when the "fraud" is disclosed, but the "business" has apparently developed sufficiently extensively to attract the attention of the police. At Bow-street Police Court on the 27th June a man was charged with attempting to obtain money by false pretences by the above methods. The envelopes in question contained an obsolete German mark note and a racing tip which the vendor described respectively as "a genuine bank note" and "something that might be worth pounds." The magistrate, describing the case as a border line one, said that he believed that it was fraud, but he dealt with the charge as one of obstructing the pavement and imposed a fine of 40s. Actual or positive fraud has been held to include cases of the intentional and successful employment of any cunning, deception or artifice used to circumvent, cheat or deceive another, and there can be little doubt in the present case that the obviously untrue suggestion regarding a wager coupled with the "genuine bank note" statement constitute a sufficient deception to merit the description of fraud. The loss of sixpence in these circumstances may be negligible to the majority of people, but protection should be afforded to those literally poor innocents who are not sufficiently intelligent to realise that one very rarely gets something, particularly a bank note, for nothing.

Student's Claim against Professor.

AN UNUSUAL case was tried recently at Edinburgh when Lewis Coutts, formerly a student at Aberdeen University, appealed from an interlocutor of the Sheriff of Aberdeen. COUTTS had claimed £5,000 damages from Professor JACK, of the chair of English Literature at Aberdeen, on the ground that the professor had wrongfully refused him permission to attend the honours English class at Aberdeen. The Sheriff decided in favour of the professor, and the Lord President, in dismissing the appeal, said that an attack upon the professor based upon malice or oblique motive failed for want of proof, and that it was also impossible to hold that the plaintiff's academic career was brought to a close by Professor JACK's declining to allow him to attend his class. The reasons for the professor's action are not set out, but the effect of such exclusion would obviously vary, in similar cases, with the type of university and the type of lecture. In the ancient universities lectures are not usually compulsory. Many undergraduates never attend lectures at all and yet attain the highest honours. In the case of certain lecturers it is said to be more comfortable to sleep in one's bed than in the lecture room. In the case of others their lectures are only attended because they happen to be examiners. While it is not for a moment suggested that the average lecture is of this type, nevertheless it could hardly be said that a student who was excluded from any particular course of lectures at one of these foundations suffered any *serious* disability as regards his examinations. Far otherwise would it be at one of the newer universities, where lectures are generally compulsory and where the examination papers are often based entirely on them. At one of such universities exclusion from a course of lectures might well prejudice a student in his whole academic career. In any case to estimate the measure of damages would be a matter of extreme difficulty.

Sun-bathing and the Law.

IT IS recorded in a newspaper that, during the recent tropical weather, two young women took a sun-bath on Exmoor near a public road, with, as photographers might say, 100 per cent. of exposure, treating the curiosity and the criticisms of the wayfarers with equal indifference. The moral and theological aspects of the matter are hardly subjects for these pages, but the question whether these young persons offended against the law is within our province. There is no doubt, of course, that indecent exposure is a common law offence in a male, and that it can be committed without any evil intent. Thus in *R.* v. *Crunden* (1809) 2 Camp. 89, the

defendant stripped and bathed off the shore at Brighton, in a place where he had often done so before, but houses had recently been erected near by. No motive was imputed to him other than the salutary one of a pleasant dip. On prosecution, his counsel pleaded, with some ingenuity, that, if his bathing was a nuisance, the new inhabitants had come to it and must put up with it. M'DONALD, C.B., however, soon dealt with this specious argument and held that, whatever place becomes the habitation of civilised man, the laws of decency must there be enforced. In accordance with the justice of the case, therefore, the defendant was bound over. There does not, however, appear to be any record of a woman or girl being prosecuted for such an offence (unless in the company of a man), which may be a criminal act for male persons only. If this is the right view, there is an analogy in s. 11 of the Criminal Law Amendment Act, 1885, under which males only may be indited for gross indecency. As to statutory law, s. 28 of the Town Police Clauses Act penalises every person who, to the annoyance, etc., is wilfully guilty of indecent exposure, and s. 29 penalises indecent behaviour without qualification. There can be no reasonable doubt that these prohibitions would apply to both sexes, but the Act can hardly run on Exmoor. The indecent exposure punished by s. 4 of the Vagrancy Act, 1824, "with intent to insult any female," is obviously a masculine offence only. Possibly, therefore, these young women were within their rights on Exmoor, though they certainly could not behave in such a manner in any park or recreation ground with properly framed regulations. It might be a nice question whether a regulation as to decency would be *intra vires* under the L.P.A., 1925, s. 193 (1) (*b*). The public ought, of course, to have every reasonable opportunity for sun-bathing, now its healthful effects are known, but these are compatible with exposure which is deemed decent in the twentieth century (whatever might have been the case in the nineteenth) and the law should be framed accordingly.

The Nationality of Wives.

SOME OF the difficulties of Englishmen who marry foreigners and tire of them are discussed on p. 477, *ante*. These turn on our rigid rule that a woman's domicile is that of her husband, but difficulties also occur in respect of nationality. Thus, by s. 10 of the British Nationality and Status of Aliens Act, 1914, the wife of a British subject is deemed to be a British subject and the wife of an alien is deemed to be an alien. But it has been pointed out that a British girl who marries an American does not thereby automatically acquire American nationality by American law, and, therefore, is repudiated by both States. On the other hand, an American girl who marries a British husband retains her American allegiance by American law, but also becomes a British subject under s. 10, *supra*. The anomalies which may arise in this way are discussed in *Stoeck* v. *Public Trustee* [1921] 2 Ch. 67, in which RUSSELL, J., held that the condition of "statelessness" or "*sans patrie*" is recognised by our law. A stateless person would be an alien, but one who, presumably, so long as he remained in that condition, could not be an alien enemy, though, on the other hand, he could not have such privileges as might be accorded a definite national. A double allegiance would be both awkward and dangerous in case of warfare between the respective states claiming a particular subject; if there were such persons in England during the war, they were, no doubt, interned, a course which made for the mutual safety of the nation and the individual. The loss of British nationality when a girl marries a foreigner has been represented as a hardship cast on a woman by the "man-made law," but, save in the unhappy event of a war between Great Britain and the husband's country, it is difficult to conceive of much hardship arising. Still, the rules that a woman's nationality and domicile should rigidly follow that of her husband hardly accord with modern notions of a woman's place in matrimony, and need reconsideration. The difficulty is, of course, that a revision of our own laws in this direction would merely add to the conflict of laws unless other nations moved also in the same direction. The whole matter suggests some spade-work at Geneva, to the end that the rules of domicile and allegiance should be uniform throughout the civilised world.

False Pretences with Intent to Defraud.

IT MUST never be forgotten in cases where obtaining goods or money by false pretences is charged, that one ingredient of the offence is the intent to defraud. There are innumerable false pretences, if the word "false" is to be applied to a careless mis-statement of fact. Many articles are puffed by their vendors in the most reckless way, but provided this is done by way of general assertion, and not by specific misdescription intended to extract a price which would not be forthcoming were the article not of the particular material or make put forth, no indictment would lie. Were it otherwise the courts would be overwhelmed with prosecutions, and much injustice would be done. The giving of a worthless guarantee might, in some circumstances, amount to a false pretence intended to defraud, but the whole circumstances would have to be scrutinised with the greatest care. A man of straw, who took a fraudulent share in a big deal, by offering a worthless guarantee, his affairs being such that they contained no prospect, even remote, of being able to make good the principal's default, might be said to have made a false pretence whereby that principal obtained money, goods or valuable securities as the case might be, but no amount of undue optimism or disregard of probabilities would suffice, unless his pretence were at the moment it was made tainted by fraudulent intent. It is very necessary to remember this. In *R.* v. *Ferguson* [1913] 9 Cr. App. R. 113, a chairman of sessions failed to direct the jury upon this element of a case where false pretences were charged, and the Court of Criminal Appeal quashed the resulting conviction. Quite often a bench of justices, or a judge directing a jury, may have to say: "There are cases where it is impossible that the money could be obtained unless there was an intent to defraud. It may be inferred from the circumstances of the case," and go on to ask the question, "Is this one of them?" If the answer is, "No," there must be evidence specifically directed to the issue of fraudulent intent. If none is forthcoming, the case is incomplete, and refusal to commit for trial, or acquittal, must follow. An elementary, but often forgotten, piece of sound practice is to take the ingredients of the alleged offence one by one and see if there is evidence to establish each.

Motor Car as a Dangerous Thing.

RATHER MORE than twenty years' ago Lord (then Mr. Justice) DARLING gave it as his opinion in *Chichester Corporation* v. *Foster* [1906] 1 K.B. 167, that, strictly speaking, nothing can be called "a dangerous thing," except, perhaps, in the expression used by Mr. POPE in regard to "a little learning." The allusion was apt and the observation witty, but the lapse of twenty years and the extraordinary increase on the roads during that time of the motor car, rather suggests that this now almost too-popular vehicle must be collocated with "a little learning," so as to be properly described as "a dangerous thing." Certainly the long list of road accidents chronicled day by day in the newspapers points in this direction, but it is not only when in motion that the motor car has the property of being dangerous, it may have it likewise when supposed to be safely stabled in its garage. This is well illustrated by a recent case in Alberta: *Brody's Limited* v. *Canadian National Railway Company* [1929] 1 Western Weekly Reports 715. There the plaintiff occupied the upper part of a building the groundfloor of which was used by the defendant as a garage. As a result of the act of the defendant's servant in cleaning with gasoline the engine of one of the motor trucks while the

truck was inside the building, and while the engine was warm, without disconnecting the engine from the battery, a fire broke out which damaged the plaintiff's goods and fixtures in the upper part of the building. On a claim by the plaintiff for the damage occasioned to his goods, it was held that the defendant was liable both on the ground of negligence and under the rule in *Rylands* v. *Fletcher* (1866), L.R. 3 H.L. 330, inasmuch as the motor truck, in the condition in which it was while being cleaned, was a dangerous thing within the meaning of the rule in that famous case, which, it will be remembered, lays it down that if a person brings upon his land anything which would not naturally come there, and which is in itself dangerous, and may become mischievous if not kept under proper control, he will be liable in damages for any mischief thereby occasioned, although he may have acted without personal wilfulness or negligence.

Ecclesiastical Patronage.

One of the principal items on the agenda of the Church Assembly recently sitting at Westminster was the discussion of the Benefices (Patronage) Measure which is to come up on "report" to be considered with amendments. The "Measure" passed its "general approval" stage at the Spring Session of the Assembly—although a good deal of opposition manifested itself then. Whether it will pass the revision stage this time remains to be seen. It proposes to set up in every diocese a "Patronage Corporation" to be a body corporate charged to exercise the power to hold and transfer rights of patronage on behalf of the diocesan "Board of Patronage"; and another body called the "Board of Patronage," which is to be elected triennially and is to act as an advisory body in regard to the whole matter of presentation and patronage. This Board is to consist of three clergymen and five laymen with the Bishop as *ex-officio* chairman—with various additions to its membership for specified purposes. There is thus provided for the first time something approaching effective representation for the laity in regard to the choice of incumbents. The "Measure," however, is likely in any event to have a stormy passage—many of the clergy being stoutly opposed to its provisions.

Delivery of Excess Quantity of Goods.

What the judge described as an "interesting and unusual case" was tried recently (*Gabriel, Wade and English, Ltd.* v. *Arcos, Ltd.* (73 Sol. J. 483)). The case arose out of a sale of Russian wood goods which were shipped by four vessels to Hull and West Hartlepool. On receipt of the bills of lading the buyers complained of the excess of certain of the woods and they claimed allowance in respect of such excess. The sellers finally offered to take back the excess quantity, or, alternatively, to submit the matter to arbitration, and the buyers elected to accept the latter. In the result, the umpire in the arbitration found as a fact that there had been a wrong delivery of goods and, subject to the opinion of the court, he awarded the buyers £310. The only question for the court was whether there was a right to damages. In giving judgment, Mr. Justice Acton said that the buyers might have rejected the whole and claimed damages, but if they kept the whole they were liable to pay for the whole at contract rate. It was said to be commercially impossible for the buyers to reject the excess part and keep the rest, and the buyers, in fact, elected to take the whole and they paid at the contract rate for it. The delivery of the excess quantity was, in effect, an offer of a new contract, and that new contract was accepted by the buyers; both parties knew perfectly well what the new percentages were. The only claim made by the buyers now was that the quantities were wrong, but the answer to that was that the buyers had accepted the goods although they might have rejected them. The only right which the buyers in such a case had was to reject the goods when tendered. If they accepted the goods they could not afterwards claim damages.

Criminal Law and Police Court Practice.

Findings of Fact.—Two cases briefly reported in the press last week illustrate a point which is often overlooked, that although justices are the judges of fact, and the High Court will not lightly interfere with their findings, the High Court will certainly interfere if the findings of fact are not founded upon evidence. That there was no evidence in support of a finding is a point of law which may always be taken.

The cases came before a Divisional Court and were concerned with the fencing of machinery. In one, the Lord Chief Justice said that "the justices appeared to have fallen into several of the fallacies with which factory cases were apt to abound. They seemed to have thought that it was an answer to the summons that the man had some other way of getting where he had to work." He added, with that deadly directness that makes things seem so unanswerable, that "They had found that the shafting was safe for a great number of people who did not go near it."

In the other case, Lord Hewart said that the justices had clearly treated the matter with care and thought, but they had imported words into the Act, and had dealt with the case as if the shafting ought only to be fenced where fencing was required for safety during the ordinary course of work in the factory. There was no evidence on which they could properly find that the shafting was as safe as it would have been if it had been securely fenced.

Magistrates, whether lay or learned, may be pardoned for finding difficulty sometimes in arriving at decisions upon matters that seem peculiarly the province of the expert. However, it is impossible, and indeed it would be undesirable, to hand over the responsibility for the decision to experts. It is for the magistracy to make the best use of expert evidence and then decide the law.

Catching Them Young.—It is well established as a fact that the majority of habitual offenders began their criminal career while still young. Therefore it is only reasonable to assume that if effort is concentrated on the young offender there is some hope of reducing the supply of criminals at its source.

Two methods are at present giving encouraging results. The first is probation, where the offender remains in his own home, or possibly in a hostel or voluntary institution if home conditions are unsatisfactory; the second is committal to an industrial school, a reformatory school or a Borstal institution, according to the age and character of the young offender. The first method is generally tried once or more before it is decided to take the more drastic step of removing a lad or a girl from his or her home and friends and "putting him (or her) away" in an institution for a term of years.

Where probation has been given a trial and has not succeeded, it is as well to face the fact and not to delay committal to a school or a Borstal institution until the offender has become almost incorrigible. Sir Meyer Spielman, writing to *The Times* recently, called attention to the good work being done by reformatory schools, and gave striking examples of their successes. He offered to put magistrates in touch with schools, adding that visits from them would be welcome. We can vouch for it that they would. Only too few people take the trouble to see things for themselves. Magistrates who are uneasy about committals to certified schools or Borstal institutions should visit them. Such visits are a cure for pessimism and cynicism about crime and criminals.

At Bow-street on Tuesday, the 16th ult. (before Mr. Graham Campbell), Charles Vincent Whitgreave (sixty), solicitor, formerly of Ponsonby-place, W., but now described as having no fixed abode, was remanded on a charge of converting to his own use £1,220, part of a fund of which he was trustee under the will of the late Father Bannin, for the benefit of the Italian Church, Hatton Garden.

The Companies Act, 1929.

By ARTHUR STIEBEL, M.A., Barrister-at-Law (Registrar, Companies—Winding Up—Department, and Author of "Stiebel's Company Law and Precedents").

(*Continued from p.* 492.)—VI.

Accounts and Audit.—In future, companies will have to keep proper books of account, showing the particulars required, and such books must be kept at the registered office of the company or at such other place as the directors think fit, and must at all times be open to inspection by the directors.

The directors of every company must, at some date not later than eighteen months after the incorporation of the company, and subsequently once at least in every year, after the holding of the last preceding general meeting lay before the company in general meeting a profit and loss account and a balance sheet, made up to a date not earlier than the date of the meeting by more than nine months, or, in the case of a company carrying on business or having interests abroad, by more than twelve months. These periods may be extended by the Board of Trade. There must be attached to every such balance sheet a report by the directors as to the state of the company's affairs, the amount, if any, which they recommend should be paid by way of dividend, and the amount, if any, which they propose to carry to the reserve fund, general reserve or reserve account shown specifically on the balance sheet, or to a reserve fund, general reserve or reserve account to be shown specifically on a subsequent balance sheet. Apart from any very special provision in the articles, profits may always be put to reserve, and no member is entitled to any share of the profits until a dividend is actually declared. The mode in which a dividend will be distributed is a matter for the articles. If the articles are silent, a dividend will be distributed according to the shares held by the members—usually the articles provide that dividends shall be paid according to the amounts paid up, and often certain shares are given preferential rights to dividend.

Where a company holds shares in a subsidiary company (or companies) it must show the shares so held, and also any debt due to it from such company (or companies), and where the holding company is indebted to a subsidiary company (or companies), it must show such indebtedness. Where a company holds or owns more than 50 per cent. of the issued shares of or more than 50 per cent. of the voting powers in another company, or has power directly or indirectly to appoint a majority of the directors of another company, such other company will be a subsidiary company. A subsidiary company may or may not be a company within the meaning of the Act. The company which holds the shares or otherwise controls the subsidiary company is called the holding company. The holding company must annex to its balance sheet a statement signed by the persons who are required to sign its balance sheet, showing how the profits and losses of the subsidiary company, or, if there is more than one, the aggregate profits and losses of the subsidiary companies shares so far as they concern the holding company have been dealt with in or for the purposes of the accounts of the holding company, and in particular how and to what extent: (1) provision has been made for the losses of a subsidiary company, either in the accounts of that company or of the holding company, or of both, and (2) losses of a subsidiary company have been taken into account by the directors of the holding company in arriving at the profits and losses of the holding company as disclosed in its accounts.

It will be necessary also to specify in such statement any qualification that the auditors have made on the balance sheet of any subsidiary company, and if the directors of the holding company are unable to obtain any information necessary for the preparation of this statement, the directors who sign the balance sheet must so report in writing, and this report must be annexed to the balance sheet in lieu of the statement.

Loans to directors must also be stated in the accounts, and also the remuneration paid to directors for their services; but the remuneration of a managing director need not be shown, and only sums paid by way of directors' fees need be stated in the case of any other director who holds any salaried employment or office in the company.

The balance sheet must be signed by two of the directors, or, if there is only one, by that director, and the auditors' report must be attached to the balance sheet, and the report must be read before the company in general meeting.

In a company other than a private company, persons entitled to receive notices of general meetings of the company are entitled to a copy of the balance sheet at least seven days before the date of the meeting when such balance sheet is to be laid before the company in general meeting and any member of the company and any debenture-holder will be entitled to be furnished with a copy of the balance sheet on demand.

These provisions also apply to a private company which has failed to comply with such of its articles as constitute it a private company, and has not been relieved by the court. In other private companies a member's only right is to have a copy of the last balance sheet and auditors' report on payment.

Auditors are appointed by the company, and if such an appointment is not made the Board of Trade will make the appointment.

Directors, however, may appoint auditors at any time before the first annual general meeting (formerly it was before the statutory meeting) and if the directors fail to exercise this power the company in general meeting may appoint the first auditors, and thereupon the power of the directors will cease.

The remuneration of the auditors of a company will be fixed by the company except in the cases where an auditor is appointed before the first annual meeting or by the Board of Trade.

Directors or officers of a company may not be auditors and except where the company is a private company, a person who is a partner of or in the employment of an officer of the company cannot be an auditor. Bodies corporate may not be auditors.

Auditors must report to the members on the accounts examined by them, and on every balance sheet laid before the company in general meeting during their tenure of office, and the report must state whether or not they have obtained all the information and explanations they have required and whether, in their opinion, the balance sheet referred to is properly drawn up so as to exhibit a true and correct account of the company's affairs according to the best of their information, and as shown by the books of the company.

They are entitled to access to all the books and accounts of the company, and to receive such information from the directors and officers of the company as may be necessary.

In future, the auditors of a company will be entitled to attend any general meetings of the company at which any accounts which have been examined or reported on by them are to be laid before the company, and to make any statement they desire with respect to the accounts.

Auditors are expected to display reasonable care and skill, but if they have acted honestly they will only be liable if they have shown gross negligence or gross incompetence. As will be seen, auditors can in future not contract themselves out of this liability, but the court is given some power of granting them relief.

Inspection.—The Board of Trade has power to appoint one or more inspectors to investigate the affairs of the company. There must be an application by members holding not less than one-tenth (or one-third in the case of a banking company) of the shares issued. Where a company has no share capital

one-fifth of the members must apply. The application will be supported by such evidence as the Board of Trade requires for showing that the applicants have good reason for, and are not actuated by malicious motives in, requiring the investigation, and the Board may require security for the costs of the enquiry, not exceeding £100.

It is the duty of all officers and agents of the company to produce to the inspectors all books and documents in their custody, and an inspector may examine such officers and agents on oath, and if they refuse to give evidence or to produce the company's books the matter may be reported to the court. The court can punish an offender as if he had been guilty of contempt of court.

On the conclusion of the investigation, the inspectors must report their opinion to the Board of Trade, and if it appears to the Board of Trade that any person has been guilty of any offence in relation to the company for which he is criminally liable the Board can refer the matter to the Director of Public Prosecutions, or in Scotland to the Lord Advocate.

If the Director of Public Prosecutions thnks a proseciution should be instituted, and that it is desirable that the prosecution should be conducted by him, he will institute proceedings accordingly, and it will be the duty of all the officers and agents of the company, past and present (other than the defendant in the proceedings), to give him all the assistance which they are reasonably able to give.

Bankers and solicitors of the company and any persons employed by the company as auditors will be agents for this purpose, but a person who is acting as solicitor for the defendant will not be required to disclose any particulars communicated to him in that capacity.

The expenses of such an investigation will be defrayed by the Board of Trade where the prosecution is instituted by the Director of Public Prosecutions. In any other case expenses will be defrayed by the company, unless the Board of Trade directs they shall be paid by the applicants or in part by the company and in part by the applicants. Where the company fails to pay the sum which it is so ordered to pay, the applicants will have to make good the deficiency up to the amount by which the security given by them exceeds the amount which they have been directed by the Board to pay. Any balance of expenses not defrayed by either the company or the applicants will be defrayed by the Board of Trade. It will be seen that the provisions of this section are largely new.

A company may by special resolution appoint inspectors. They will have the same powers as inspectors appointed by the Board of Trade, except that they will report to the company and not the Board.

Officers and agents of the company who refuse to produce books or to answer questions to the inspector will be in the same position as if such refusal had taken place before inspectors appointed by the Board of Trade.

(To be continued.)

"Following" Secret Commissions.

By E. O. WALFORD, LL.B., Solicitor.

It is proposed in this article to consider the position which arises when an agent receives a secret commission and invests the proceeds of his fraud. Three questions of importance arise in such cases:—

(i) Can the principal in such a case follow the moneys received by the agent into their then state of investment and claim that the investments be brought into court pending their transfer to him, or is his claim limited to a judgment for the moneys received by the agent and the enforcement of such a claim by the less certain means of execution after judgment?

(ii) Do the Statutes of Limitation apply?

(iii) Against whom may proceedings be instituted?

These questions have been clearly answered in the case of *Lister & Co.* v. *Stubbs* (1890), 45 Ch. D. 1, by the Court of Appeal. In that case one Stubbs, a foreman dyer in the plaintiffs' employ, gave orders to a firm named Varley & Co., who paid to him without the plaintiffs' knowledge large sums by way of commission upon these orders. Upon ascertaining the facts the plaintiffs issued a writ claiming (*inter alia*) the moneys received, and an account. They then moved for an interlocutory injunction to restrain the defendant from dealing with the investments representing the moneys which he had received from Varley & Co. and for an order directing the defendant to bring into court these investments.

The court had as a guide two earlier decisions of considerable importance: *Metropolitan Bank* v. *Heiron*, 5 Ex. D. 319, and *Morison* v. *Thompson*, L.R. 9, Q.B. 480.

In the first of these cases a director of a bank had received a sum of £250 with which to settle a claim which the bank had against one Daniells. The director in question promised to use his influence to procure a settlement; but in breach of trust he misrepresented the position to the bank, who settled with Daniells for £50 a debt of £3,800. The bank more than six years after the fraud had been discovered sued their former director for the £250. The defendant pleaded the Statute of Limitations. The Court of Appeal before whom the case came in due time, decided that the suit could not be entertained, since Courts of Equity acting in analogy to the common law with regard to cases of concealed fraud could not grant relief to the bank after the expiry of six years from the time at which the fraud became known. Lord Justice Cotton said: "Where a trustee has a fund in his possession and wastes it either by neglect of duty, or by doing an act not justified, and the *cestui que* trust comes to recover his money, no time will bar his suit . . . But the present case is not such a case. Here the money sought to be recovered was in no sense the money of the company . . . It is a suit founded on breach of duty or fraud by a person who was in the position of trustee, his position making the receipt of the money a breach of duty or fraud. It is very different from the case of a *cestui que* trust seeking to recover money which was his own before any act wrongfully done by the trustee. The whole title [in this case] depends on its being established . . . that the fraud of the trustee has given the *cestui que* trust a right to the money."

In the other case of *Morison* v. *Thompson* (*supra*), the defendant was the agent of the plaintiff in the purchase of a ship. The agent for the owner of the ship had arranged with the owner that he should receive for his own benefit all moneys beyond a given figure which he could obtain upon disposing of the ship in question. The defendant being aware of this arrangement entered into a bargain with the owner's agent by which he was to receive, and he did in fact receive, £225 out of the purchase moneys. The plaintiff upon learning this, sued the defendant for the £225 received by him. It was held that this sum was money received to the use of the plaintiff, and was recoverable as money had and received accordingly.

So far the position is clear; but the fact that the principal may, under such circumstances, recover the money as a sum had and received to his use, does not necessarily entitle him to follow that money into the investments representing it from time to time in the hands of the fraudulent agent. The position is very different from a case in which the agent received moneys as Stirling, J., says, "clothed with a trust," as in *Taylor* v. *Plumer*, 3 M. & S. 562, where a broker had wrongfully invested moneys in securities of a nature different from those in which he had been instructed to invest the moneys, and it was laid down that the principal might follow his moneys into the unauthorised investments, since they were his own moneys in another form. Returning to the case of *Lister & Co.* v. *Stubbs*, it will be seen that the moneys received by the agent as a bribe were not originally the moneys of the plaintiffs. Clearly, Messrs. Varley & Co. might have

withheld payment from the defendant, and in such event he could not have recovered the moneys which were to be paid in pursuance of his corrupt bargain. Counsel urged upon the Court of Appeal *Hay's Case*, L.R., 10 Ch. 593, in which a director receiving from his company a cheque for a particular purpose, applied it to another purpose. It was held that the proceeds of the cheque might be "followed." But that case, again, was merely another example of the following of moneys originally belonging to the *cestue que* trust.

As LINDLEY, L.J., pointed out, the relation between STUBBS and LISTER & Co. was not that of trustee and *cestui que* trust, as in *Hay's Case*; but was that of debtor and creditor.

Accordingly the injunction sought to restrain the defendant from dealing with the investments representing the bribes received by him was refused.

In conclusion, it should be noted that the principal is not in such cases limited in his remedies to a suit against the agent. It is well established that he may sue either the agent or the person who has paid the secret commission, or both of them. *Cohen* v. *Kuschke & Co.* (1900), 83 L.T. 102. And it is immaterial whether the remedy is pursued first against the agent or the third person. Moreover, the principal's right extends to damages for any loss suffered by him by reason of his having been induced to enter into the contract, without bringing into account any part of the secret commission which the agent has in the meanwhile handed over to him: *Salford Corporation* v. *Lever* [1891] 1 Q.B. 168.

A Conveyancer's Diary.

Contracts for Sale as Trustees.

The recent case of *Green* v. *Whitehead* [1929] W.N. 207, is interesting and important as showing the effect of s. 36 of the L.P.A., 1925. The matter came before the court on a vendor and purchaser summons. The facts were, shortly, that F. W. Green and J. H. Green were, at the commencement of the L.P.A. entitled as joint tenants in fee simple to the property the subject of the contract in question. Therefore, upon the commencement of that Act they became trustees for sale under s. 36 (1), which provides that "Where a legal estate (not being settled land) is beneficially limited to or held in trust for any persons as joint tenants the same shall be held on trust for sale in like manner as if the persons beneficially entitled were tenants in common but not so as to sever their joint tenancy in common." What the effect may be of the words "in like manner as if the persons beneficially entitled were tenants in common," I do not know. At any rate, the joint tenants become trustees for sale. In the case mentioned one of the joint tenants (J. H. Green) had given a power of attorney to one Rowlatt, which was in very wide terms and empowered the attorney to sell all his property whether owned solely or jointly with any other person and to execute all deeds, etc., necessary for carrying any such sale into effect. F. W. Green and J. H. Green contracted to sell the property, and it appears that in the contract the vendors were stated to be selling as trustees for sale. A draft conveyance was approved in which the vendors were described as beneficial owners, but expressed to convey in pursuance of the trust for sale implied by statute. A fuller report of this case will no doubt show more exactly what the language used in the approved draft really was, but it does not seem that any great importance is to be attached to it. The learned judge (Eve, J.) apparently held that the vendors were selling and purporting to sell only as trustees for sale, and that the power of attorney given by J. H. Green was ineffective and consequently the purchaser was not bound to accept a conveyance executed by F. W. Green, and Rowlatt as attorney for J. H. Green. It was contended that as F. W. Green and J. H. Green were absolutely entitled beneficially to the property the conveyance offered was effective, but the learned judge held that the vendors had contracted to sell as trustees and could not substitute another title. As to the last-mentioned point in the judgment, it may well be that a more detailed report will reveal more fully what the intention of the judgment was. As far as that point is concerned, as at present reported, it seems to conflict with other authorities. On the main question, however, the decision hardly seems open to doubt. At the same time it shows how in some respects (and one never knows when an instance may occur) the L.P.A. has altered the position of persons absolutely entitled to property without any apparent advantage to themselves or anyone. In the case under consideration, F. W. Green and J. H. Green were really as much the absolute owners after as before the L.P.A., but by reason of the provisions of the Act they could not act as such for neither could give a power of attorney to anyone to join with the other in selling the property except in the circumstances in which a trustee could give such a power.

At first sight the decision in *Green* v. *Whitehead* may seem to conflict with that in *Spencer & Hauser's Contract* [1928], Ch. 598. But that, I think, is not so. In the lastly-mentioned case, vendors had agreed to sell as trustees for sale under a will. It appeared, however, that there was no trust for sale in the will, but that the vendors were personal representatives of the testator and could make a good title as such. It was held (following *Re Baker and Selmon's Contract* [1907], 1 Ch. 238) that by asserting in the contract that they sold as trustees for sale, the vendors did not warrant that they could make a title in that manner, but only indicated the method in which they contemplated making a title.

It is to be remarked with regard to this case that there could be no doubt that the legal estate would pass by a conveyance by the vendors as personal representatives, selling as such, and the only question was whether the purchaser was bound to accept such a conveyance when the contract stated that the vendors were selling as trustees for sale. It was held that the purchaser was bound to accept such a conveyance.

In *Green* v. *Whitehead*, however, it seemed that the legal estate would not have passed by the conveyance offered. Trustees have power, under s. 23 (2) of the T.A., 1925, to appoint attorneys for the purpose of managing or selling property outside the United Kingdom, and under s. 25, a trustee intending to remain out of the United Kingdom for a period exceeding the month, may delegate to an attorney the exercise or execution of all or any of the trusts, powers or discretions vested in him. But in this case the property was within the United Kingdom and there was no suggestion, so far as the report shows, that the power of attorney was executed in pursuance of the powers conferred by s. 25. Consequently, the ordinary law applied, and the trustee could not validly appoint an attorney to exercise the trust for sale on his behalf.

Recovery of Testamentary Capacity by Lunatic or Defective.

Mr. Ernest L. Watson, of Norwich, writes with reference to a former "Diary" and asks whether the second paragraph of sub-s. (2) of s. 51 of the A.E. of A., 1925, should not be read as though the words "in respect of whom or of whose estate a committee or receiver has been appointed" were inserted after "a lunatic or defective." I certainly think that it should. The provision in question seems to me to mean that if a committee or receiver has been appointed the lunatic or defective remains without testamentary capacity until the committee or receiver has been discharged. I cannot see, however, how it applies at all if no committee or receiver has been appointed.

LORD MAYOR'S BANQUET TO H.M. JUDGES.

In the report of the banquet given by The Lord Mayor to His Majesty's Judges (which appeared in our issue of the 13th July) we inadvertently omitted the names of Mr. Under-Sheriff Champness and Mr. Under-Sheriff T. Howard Deighton from the list of the distinguished guests who were present.

Landlord and Tenant Notebook.

Furnished Houses and Fitness.

The responsibility of the landlord who lets furnished premises as regards the fitness for occupation of those premises is a feature of the common law, developed by the courts and left untouched by statutory enactments. The landlord's position is generally described by reference to the phrase "implied warranty." The latter word is well known to be ambiguous; we cannot, however, quarrel with it, because to describe the liability by employing the expression "covenant" or "condition," better known as they are in matters relating to tenancies, would be misleading. The reason is that breach of covenant in itself does not entitle the aggrieved party to determine the agreement; while breach of condition cannot generally be enforced until the prescribed statutory formalities have been performed.

It is well settled that a tenant who discovers that this warranty has been broken may not only repudiate the agreement, but may maintain an action for damages as well: *Collins* v. *Hopkins* [1923] 2 K.B. 617. C.A. It is therefore of some importance to intending lessors to be advised as to the extent of their responsibility.

In the first place, it should be noted that the warranty applies only to the condition of the premises at the commencement of the tenancy, not to their fitness for occupation throughout the term. If both the trouble complained of and its cause arise during the currency of the agreement, no action lies against the lessor: *Sarsons* v. *Roberts* [1895] 2 Q.B. 395. In this respect the position differs substantially from that of an owner of property under s. 1 of the Housing Act, 1925.

In the second place, however, it must be borne in mind that the landlord's responsibility is absolute, in that ignorance, culpable or excusable, is not a defence to an action on this warranty. This is not an occasion on which knowledge or honest belief are material. Thus, if science can show that at the time when a furnished house was let the water supply was infected, the tenant will be entitled to renounce the contract: *Charsley* v. *Jones* (1889), 5 T.L.R. 412. In one case it was held that the landlord was not excused by showing that the cause of the trouble was unascertainable: *Harrison* v. *Malet* (1886), 3 T.L.R. 58. Thirdly, the degree of fitness should be considered. Here again the position of the landlord is unenviable; for the tenant is entitled not merely to a house free from infection, but to a house free from the risk of infection: *Collins* v. *Hopkins*; *Bird* v. *Lord Greville* (1884), Cab. & El. 317. The test is whether there is an actual and appreciable risk; a matter which involves the consideration of medical and scientific evidence, and of the question whether the particular tenant is reasonably or unreasonably apprehensive.

What has, perhaps, not yet been satisfactorily settled is the connotation of "fitness for occupation." In reported cases, the tenant's complaint appears always to relate to the sanitary condition of the premises. Noxious insects, defective drains, tubercle bacilli and so forth have been the subject-matter. In the absence of any recorded decision to the contrary, it is not impossible that the doctrine may be extended to apply to structural defects, if latent at all events; and it may be observed that the interpretation that has been placed upon the phrase "fit for human habitation" (which cannot easily be distinguished from "occupation") contained in the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, and in the Housing Act, 1925, is not limited in this manner.

As regards extending or limiting the rule in other directions, it was contended in one case that the warranty would apply to unfurnished premises if let for immediate occupation; the case was, however, decided on other grounds: *Bunn* v. *Harrison* (1886), 3 T.L.R. 146 C.A. It has also been said *obiter* that the principle applies only to short tenancies: see *Chester* v. *Powell* (1885), 52 L.T. 722; but as furnished houses are rarely let for more than a few months, this proposition is not likely to be tested.

It is, of course, theoretically possible to contract out of the responsibility; practitioners will realise, however, that the effect of a clause designed to achieve this end might in many cases unduly deter an intending tenant. In these circumstances it is suggested that the fact that there is no corresponding implied warranty on the part of tenants be invoked. The tenant can expose the premises to infection without exposing himself to an action at the suit of the landlord: *Humphreys* v. *Miller* [1917] 2 K.B. 122 C.A. (though he may be liable, if the disease be pulmonary tuberculosis, to removal under the Public Health Act, 1925). This being so, it is suggested that to insert in the draft some form of warranty on the part of the tenant would probably result in the landlord being enabled to limit his liability to matters within his knowledge and power and so achieve the same result.

Our County Court Letter.

ADDED PERIL AND WORKMEN'S COMPENSATION.

(*Continued from* 73 Sol. J., p. 280).

II.

In the recent case of *Pape* v. *Gilbert and Hall* at Nottingham County Court, the applicant claimed an award in the following circumstances: The deceased was a joiner, and in the course of his duty he was required to deliver the pay sheets at the office each Thursday night, for which purpose he travelled by tram, his fare being allowed by the respondents. On one occasion he rang the bell at a request stop near the office, but fell on to the roadway on the tram failing to stop, and sustained injures from which he died. The case for the defence was that the driver and the conductor neither heard the bell nor knew anything of the accident, and that the speed of the tram was 12 miles an hour. The danger of alighting at such a speed was not peculiar to the employment, and the

deceased was neither required nor even authorised to expose himself to such a risk. His Honour Judge Hildyard, K.C., held that the deceased was on the tram in the course of his employment, but in trying to alight at the above speed he was adding an extra peril which he was not bound to encounter in the terms of his service. Judgment was therefore given for the respondents.

MARRIED WOMEN'S LIABILITY ON CONTRACTS.

THE difficulty of establishing the above was recently exemplified in *Watson and Sons* v. *Greenwood*, at Ross County Court, the plaintiffs' claim being for £33 15s. 5d., the balance of the cost of installing a new bathroom. A member of the firm had interviewed the defendant in her husband's lifetime, and the plaintiffs' case was that she had then given the order and had promised to pay out of her own money—to be received from a printing and stationery business in South Wales. The estimate and accounts had nevertheless been sent to the husband, as his name was already on the books, but the premises were actually owned by the wife, who was receiving the benefit of work done at her request. The defence was that the husband had been tenant of the wife at £104 a year, the receipts for rates and taxes being made out to him, and that besides giving the order he had made a payment on account of £80 to the plaintiffs. His Honour Judge Macpherson observed that a question arose as to whom credit was given, and he would either decide that point or grant an adjournment for the defendant to be sued as administratrix, as the husband was technically responsible. The plaintiffs decided to proceed—there being small prospects of payment from the husband's estate—and the defendant denied (*a*) that she had ever given the order or promised to pay, or (*b*) that the £100 banknote (out of which the husband had made the payment on account) was her money. It was held that there was no proof of credit having been given to the defendant, either solely or jointly with her husband, and in the correspondence there was no suggestion that the plaintiffs ever looked to the defendant to pay. Credit had been given to the husband in the belief that he owned the premises, and as the defendant was not personally liable, she was entitled to judgment. The defendant, however, had had the value of the work and—as there was some evidence that she had led the plaintiffs to think she would pay—she was deprived of her costs, each party having to pay its own.

WARRANTIES AS TO THE STATE OF HOUSES.

(*Continued from* 73 SOL. J., p. 397.)

II.

AT the last Devon Assizes, in *Field* v. *Williams*, the plaintiff claimed damages for fraudulent misrepresentation on the sale of a house at Exmouth, the inducement to purchase having been that there was a continuous supply of water. The case for the plaintiff was that in 1924 the defendant represented that he had put in storage tanks, so that the house would not be without water if the town supply were turned off, but experience had shown that a continuous supply was never obtainable, and, as the tanks were insufficient, the house was often practically without water. The surveyor to the urban district council stated that, on receiving the plans, he had written the defendant with regard to the water, as a proper supply could not be guaranteed in that situation, but the trouble might be mainly due to a neighbour using a garden hose from the same pipe. The defendant's evidence was that during a test a full flush of water was obtained, and on one occasion, when the plaintiff had complained, there was plenty of water in the garage tap, and fish were maintained in the tanks. It was further stated that the plaintiff had been told the supply was not continuous, and the jury returned a verdict for the defendant. Mr. Justice Roche gave judgment accordingly, and pointed out that a verdict for the plaintiff could not have been supported, as the transaction was five years old and there was no evidence of fraud.

Practice Notes.

THE PROTECTION OF SALMON FISHERIES.

IN the recent case of *Teign Board of Conservators* v. *Murdock*, at Teignmouth, a master mariner was summoned for (1) having placed a fixed engine for facilitating the taking of salmon, (2) having obstructed the free passage of salmon, contrary to the Salmon and Freshwater Fisheries Act, 1923, s. 11 (1). At Salty Bank—one of the best pools—a water bailiff had found a trammel net, 180 feet long and 12 to 14 feet deep, secured by a grapple at each end and buoyed in the middle by a can, and when about to seize it he was forbidden to do so from the deck of the s.s. "Ianthe," a vessel commanded by the defendant. The net was then taken into a boat by three of the crew, who were stated to be acting in pursuance of orders given by the defendant. The defence was that the crew were off duty, that the defendant was therefore not responsible for what they did, and that the first he knew of the occurrence was when he was awakened from sleep by the expostulations of the water bailiff. Cross-examined as to whether the net had been down in the harbours at Fowey and Poole, where there were similar regulations, the defendant stated that nobody ever took any notice there, although he himself had never set a net, and did not know how to do so. The chairman, Mr. C. STOOKE, stated that both summonses would be dismissed, the defendant's application for costs being refused. In the absence of evidence of acting in concert, the acts of subordinates therefore constitute no offence against the above Act, which—as a penal statute—is construed strictly, the doctrine of *respondeat superior* having no application.

Correspondence.

Income Tax deducted from Wife's Maintenance.

Sir,—May I venture to suggest that the paragraph under the above heading among "Current Topics" in to-day's issue of THE SOLICITORS' JOURNAL, is not quite accurate, possibly owing to the need for compression.

It is true that the Divorce court has power to order the payment of maintenance in such a way as not to be subject to the deduction of tax, see *Frankfort* v. *Frankfort*, cited by you, and *Burroughs* v. *Abbott* [1922] 1 Ch. 86. but unless this is done, then clearly tax is deductible, see *Smith* v. *Smith* [1923] P. 191. Presumably the powers of justices are similar, having regard to the case of *Cobb* v. *Cobb*, which you cite.

Therefore, in the absence of any special order having been made in the case before the Brighton Justices, it would seem that the reported decision was correct.

Of course, a wife who has suffered deduction of tax from her maintenance can claim repayment from the Inland Revenue if so entitled according to the total amount of her income, and the husband must account to the Inland Revenue for the tax deducted by him, except so far as the maintenance is paid out of income already subject to tax (Income Tax Act, 1918, general rules applicable to all Schedules Nos. 19 and 21).

London, S.W.1. KENNETH J. DAVIS.
27th July.

[Our correspondent is correct as to the Divorce Court cases, and we regret that the wrong ground was assigned for the view that income tax cannot be deducted from maintenance ordered by justices under the Summary Jurisdiction (Separation and Maintenance) Acts. After full reconsideration we still hold that view to be correct, to the extent that income tax cannot be deducted unless the amount ordered is expressly said to be subject to the deduction. There is a maximum allowance fixed by the Acts, and it is reasonable to regard that maximum as a net amount. This view has been acted upon by more than one metropolitan magistrate. But we realize that the opposite view is arguable.—*Ed.*, SOL. J.]

POINTS IN PRACTICE.

Questions from Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to The Assistant Editor, 29, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Trustees for Sale—Beneficiaries Desiring to Mortgage.

Q. 1686. The legal estate in certain land is held by B and C as trustees for sale under a will, the trust having lately arisen on the death of a tenant for life. The beneficiaries, D and E, are not anxious that the property should be sold, but desire to raise money by mortgage of it. Would you kindly advise as to the method by which this can be effected, stating the parties to the deed.

A. It is assumed the legal estate has been properly vested in B and C by the personal representatives of the tenant for life. It is not understood why, if D and E are absolutely entitled, they should not call up B and C to convey the property to them either as a whole or in severalty on a partition (see ss. 23 and 28 (3), L.P.A., 1925). D and E can then raise a mortgage themselves. The usual trusts of a conveyance to two persons as joint tenants for the benefit of themselves as tenants in common with express power to mortgage (probably unnecessary but inserted by way of precaution) can be found in any recent book of precedents.

Tithe Rentcharge—Conveyance of Land in Plots to Purchasers' Nominees—Position of Owner of Remaining Land.

Q. 1687. A client of ours agreed to sell some freehold land to a firm of builders, the land to be conveyed in plots to the builders' nominees as required. The land was subject to tithe rentcharge, and the builders were aware thereof, and they have up to now paid such tithe. All plots but two have been conveyed, and the builders have now refused to pay the tithe, on the ground that they are not the legal owners of any part of the land, thereupon the tithe collector has called upon our client to pay such tithe and moreover is threatening to obtain an order for compulsory redemption by our client (who is still the legal owner of a small portion of the land) leaving him with the chance of obtaining proportionate payments from about twenty-five persons who have purchased plots. What remedy has our client against the builders?

A. In the absence of any provision in the contract of sale the vendor has no remedy against the builders. The best plan for the vendor to adopt is to apply at the same time for apportionment and redemption (see Tithe Act, 1842, s. 14, and Tithe Act, 1925, s. 18). The effect will be the same if the tithe owner applies for redemption under s. 5 of the Tithe Act 1878. Application should be made to the Ministry of Agriculture for leaflet of particulars and forms.

Several Fishery—Whether Obligation on Adjoining Landowner to Cut Trees.

Q. 1688. By a conveyance made in 1929, A conveyed certain property to B, including half the bed of a river upon which the premises abutted, and the conveyance contained the following reservation: "Except and reserving out of the conveyance hereby made unto the vendor and his successors in title in fee simple the sole and exclusive right of fishing in that portion of the river which abuts on the hereditaments hereinbefore described together with the right for the vendor and his successors in title owner or owners for the time being of the said fishery in fee simple and all other persons authorised by him or them or any of them to enter upon the hereditaments hereinbefore described for the purpose of exercising the right of fishing in the said river and for the purpose of cutting trees bushes and weeds and repairing and renewing the fishing gates and stiles and doing all such things as may be deemed reasonably necessary and proper for the preservation and enjoyment of the said fishing hereinbefore excepted and reserved from this conveyance." A large tree belonging to B overhanging the river has lately been blown down and fallen off a steep bank into one of the salmon catches reserved by A. The only way to remove the tree is to cut it up in the water, and this will mean considerable expense. Whose duty is it to remove the fallen tree so as to make the salmon catch fishable and upon whom should the expense of removing such tree fall? There are also other trees belonging to B overhanging the river which also seem in danger of falling into the river, and A has called the attention of B to these. If B will not fall the trees after having the danger pointed out to him, can A make him liable, in case such trees fall, for the expense of removing same, so as not to disturb his right of fishing?

A. The answer to this query is rendered difficult by the wording of the reservation. There appears to be no reason in principle why the landowner should not be as much liable to remove a tree which has fallen on his land so as to interfere with a right of fishing, as it would be if it interfered with a right of way. It may be argued that as A has the right of cutting trees, B is relieved from his common law liability.

After full consideration, however, the opinion is given that the right of A to cut trees does not relieve B from liability for the continued interference with A's right of fishing. Apart from the right of abating the nuisance by removing the obstruction, the only remedy A appears to have in the circumstances is an action for an injunction to restrain B from allowing the obstruction to continue.

Telegraph Acts—Whether Postmaster-General entitled to execute Works in Private Roads.

Q. 1689. Your opinion is requested whether the combined effects of the Telegraphic Acts gives the Postmaster-General any right to execute telegraphic works in a private street. X is the owner-occupier of a house and garden abutting on a street half of which was included in the conveyance of the property so far as the same was co-extensive therewith. X is bound by covenant to pay a proportionate part towards the repair of the street, which is a cul-de-sac and has not yet been taken over by the corporation. The conveyance reserves a right of passage and re-passage to the vendors, their servants etc. The Postmaster-General now wishes to execute certain telegraphic works in the street to which X and other owners object. In view of the modification of the Telegraph Act, 1863, by the Telegraph Act, 1892, is such objection valid?

A. The material sections are s. 3 of the Act of 1863, s. 3 of the Act of 1892, and s. 2 of the Act of 1908, applying the provisions of the previous Acts to rural districts. The Acts do not give the Postmaster-General power to execute works in a privately owned street, unless it has become a public highway, or is a public footpath. It does not follow that because the street has not become repairable by the local authority it is not a public highway. It may be so even though it is a cul-de-sac, but it is, of course, for the person who alleges it is a public highway to give evidence sufficient to satisfy the court as to intention to dedicate. *Prima facie*, therefore, there is no authority to execute the works unless the Postmaster-General is prepared to prove dedication. He can, of course, take proceedings under s. 2 of the Act of 1893 and s. 1 of the Telegraph (Construction) Act, 1916, treating the street as private land.

Legal Parables.

XLI.

The Magistrate who kept the Work down.

THERE WAS once a stipendiary magistrate in a large town who might easily have been snowed under with work. But he wasn't.

If a woman with a black eye asked for a summons for assault, he would ask her when it happened. And if she said "last night," he would answer very gently: "Well, you feel rather hot about it now. Go home and think it over. I expect you'll decide to forgive the other woman. Come back in a week, if not." And the woman, who had lost one day's work and couldn't afford to lose another, decided not to come again.

If, by way of contrast, the applicant said it happened a week ago, the learned magistrate smiled just as urbanely, and remarked that the complaint was really a little stale; he hoped such an unpleasant thing would never happen again, but if it did, then come at once for protection!

Married women who wanted separations and who had been married only recently were smilingly advised to give married life a little longer trial and to take the advice of an old gentleman with some experience. Older women were reminded of the children, or, if there were none, were told that after all these years it seemed a pity—— (with a pleasant smile).

Just now and again a persistent applicant or a professional gentleman gave him a little trouble; but the stipendiary was as firm as he was amiable. A young member of the bar once went so far as to obtain a rule *nisi* for a *mandamus* to compel the stipendiary to grant a summons; but the magistrate filed such an affidavit that the learned judges unanimously averred that the learned stipendiary had exercised his discretion with obvious care and the young barrister felt rather foolish.

This magistrate never fell foul of the police, but he discouraged trivial cases by dismissing them under the Probation of Offenders Act. He contrived, by means of many adjournments, some of them *sine die*, to rid himself of most difficulties without deciding them; and he was never known to state a case.

He was unsparing of himself. He was always ready to take a long-drawn-out case on Saturday, and would tell counsel genially that he would gladly forego his week-end if they would do the same. "We'll fix it for Saturday morning," he would say, "and go on after lunch until we finish." The longest and most involved case invariably came to a satisfactory, if somewhat abrupt, ending about one fifteen.

And on the whole, the populous town was quiet and orderly, everyone spoke well of the kindly magistrate, and the staff loved him because they could always go home early.

Moral: Keep smiling.

Notes of Cases.

High Court—King's Bench Division.

Attorney-General and George Goddard.

Rowlatt, J. 15th, 16th, 17th July.

GENERAL DEMURRER TO ENGLISH INFORMATION—CROWN'S CLAIM TO MONEY ALLEGED TO BE BRIBES—AGENT AND SERVANT—INCRIMINATING INTERROGATORIES—DEMURRER BAD IN PART—OVERRULED.

Demurrer by George Goddard to the Crown's procedure by way of English information in respect of its claim to confiscated money. By his demurrer Goddard sought to show that English information was not the appropriate procedure for the Crown to adopt in its claim for money which it alleged Goddard had received as bribes while acting as a police officer and performing special duties by keeping observation on night clubs. On behalf of Goddard it was contended that English information by the old practice of the Court of Exchequer threw the onus of proof on to the defendant to prove that he was innocent, and was therefore a denial of natural justice, and was bad. The procedure was archaic. Counsel submitted that his lordship was exercising the jurisdiction of the old Court of Exchequer, and that that court, sitting as a Court of Revenue, had no right to entertain an information for an account in such circumstances as the present. As regarded the Crown's request for full discovery, an English information was an equitable proceeding and according to a Court of Equity a discovery was refused if it tended to incriminate the defendant. It was further contended that an action for money had and received did not lie against an agent for corrupt gifts where the employment did not involve the handling of the money or property of the employer. For the Crown it was submitted that it was entitled to recover the sums in question as an equitable debt, and was also entitled to discovery and to an account. The true principle was that where there was an abuse of a duty which the agent or servant owed to the principal or employer, and that abuse produced a profit to the agent or servant, he must hand it over to his principal or employer. Goddard's demurrer must go to the whole of the bill, if it did not it should be overruled, and as he could clearly not be put in peril by any answers to interrogatories in respect of offences for which he had been convicted the bill must remain and the demurrer was bad.

ROWLATT, J., said that Goddard was an agent only in the sense of a servant; his employment was not in furtherance of any pecuniary interest in the Crown, but only in furtherance of the Crown's object in preserving peace or in the government of the country. The question was whether the rule of secret profits by agents applied? He thought that it did, and that the Crown succeeded because Goddard at the material time was employed as an agent to make inquiries and got money in the course of making inquiries. The constable was never the agent of the Crown to receive bribes, and therefore "money had and received" would not apply, and the Crown's remedy was by way of English information. As regarded interrogatories he thought that it was self-evident that a man was not bound to answer them where he had committed crimes, but in the present case the defendant was asked in respect of certain matters about which he had already been convicted, and the demurrer also failed because there was no reason why he should not answer as to part of the information. The demurrer was overruled, with costs.

COUNSEL: *The Attorney-General* (Sir William Jowitt, K.C.), *the Solicitor-General* (Sir James Melville, K.C.), and *H. M. Giveen*, for the Crown; *Sir Leslie Scott*, K.C., *Gilbert J. Paull*, and *J. H. C. Goldie*, for Goddard.

SOLICITORS: *The Treasury Solicitor; Freke Palmer.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Darnbrough *v.* Darnbrough (Morgan, otherwise Collinson, intervening).

Bateson, J. 11th July.

DIVORCE PRACTICE—WIFE'S PETITION FOR DISSOLUTION—WOMAN SPECIFICALLY NAMED—SERVICE ON WOMAN WITH WHOM ADULTERY PROVED—INTERVENTION BY WOMAN OF NAME IN PETITION—COSTS OF INTERVENER.

This was the wife's petition for dissolution on the ground of the husband's adultery at an address in Grange-road East, Middlesbrough, with a woman named in the petition as "Frances May Morgan, otherwise known as Mrs. Collinson." There was no appearance on behalf of the respondent husband, but a Mrs. Frances May Collinson of another address in Grange-road, Middlesbrough, had obtained leave to intervene and defend the petition. Counsel for the intervener, at the

opening of the case, submitted that the intervener should be dismissed from the suit, with costs between solicitor and client, as she had been brought wrongly before the Court. The petition had, in the first place, been served on another woman at an address in Grange-road East, Middlesbrough, under the name and style of "Frances May Morgan,otherwise Mrs. Collinson," and it was then handed to his client, the intervener, whose name was Mrs. Frances May Collinson. She was admittedly not guilty of the charge . . . and though irregularly served, she had waived any objection to that, and had been given leave by the Court to intervene on the usual affidavit—and she was on the record as the intervener. Subsequently the petitioner had delivered particulars to her as such, making a number of further charges against her of adultery with the respondent at various hotels in Yorkshire, all of which were untrue, and there was a body of evidence to show that the petitioner knew these charges to be false, but nevertheless had persisted in making them up to the hearing. Therefore the intervener was entitled to her costs, having come there to disprove the charge with witnesses. Counsel for the petitioner submitted that as there was no service on the intervener, her coming to the court was entirely her own doing. There was no charge against her. The charge was against another woman who was actually served with the petition after having been identified by two witnesses as the actual woman with whom the respondent was charged with committing adultery.

BATESON, J., evidence having been given, said, on pronouncing a decree *nisi*, that the intervener had not been charged and had not been served with the petition. He (his lordship) was sorry that she had been brought there, but it was of her own motion, and the petitioner could not be saddled with the costs. Her intervention, if desired, could be taken off the record.

COUNSEL: *The Hon. Victor Russell*, for the petitioner; *Talbot-Ponsonby* for the intervener.

SOLICITORS: *Iliffe, Sweet & Co.*, for *J. W. R. Punch and Robson*, Middlesbrough; *Freeman, Haynes & Co.*, for *Herbert Outhwaite*, Middlesbrough.

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

House *v.* House, otherwise Nash.

Swift, J. 18th July.

HUSBAND'S PETITION — NULLITY — NON-CONSUMMATION — NO APPARENT DEFECT—LEAVE TO AMEND ANSWER BY ADDING CROSS-CHARGE—FINDING OF INCAPACITY *quoad hanc* AND *quoad hunc*—DIRECTION FOR ALLOWANCE TO WIFE *dum sola et casta*.

G. *v.* G. [1912] P. 173, *followed*.

This was a husband's defended suit for nullity on the ground of the wife's incapacity. The wife denied incapacity and set up in the alternative acquiescence in non-consummation.

SWIFT, J., having allowed the wife to amend her answer by alleging incapacity against the husband with a cross-prayer for relief, said that he would follow the course taken by Bargrave Deane, J., in *G.* v. *G.* [1912] P. 173, and grant decrees *nisi* of nullity to both parties. In addition the husband should pay the wife an allowance of £175 per annum *dum sola et casta*.

COUNSEL: *Bayford*, K.C., and *T. Bucknill* for the husband petitioner; *Willis*, K.C., and *S. J. Duncan* for the wife respondent.

SOLICITORS: *Bellord & Co.*; *J. Jarvis*.

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Societies.

The Law Society.

HONOURS EXAMINATION.

JUNE, 1929.

At the examination for honours of candidates for admission on the roll of solicitors of the Supreme Court, the examination committee recommended the following as being entitled to Honorary distinction:—

FIRST CLASS.

(In Order of Merit.)

Harold Gibbons Weston, B.A. Oxon, LL.B. London (Mr. Henry Norman Beecher Bryant, of the firm of Messrs. Wilberforce Allen & Bryant, of London), Laurence George Lewis (Mr. Edmund Major Leaning, of the firm of Messrs. Leaning & Carr, of Clacton-on-Sea), Carlton Spencer Place (Mr. George Bolton, of Bradford), Theodore Magnus Wechsler (Mr. Percy Alwyne Bax, of the firms of Messrs. Cohn, Sligman and Bax, and Messrs. Townsend & Sharpe, both of London).

SECOND CLASS.

(In alphabetical order.)

Alfred Sydney David Albert (Mr. Arthur Frank de Fontblanque, of the firm of Messrs. Allen & Son, of London), Stanley Arthur (Mr. John Reginald Jacob, of Abergavenny), Arthur Roy Boucher (Mr. Arthur Stanley Brookes, of the firm of Messrs. Bevan, Hancock & Co., of Bristol; and Messrs. Gregory, Rowcliffe & Co., of London), Samuel Herbert Brookfield, LL.B. London, LL.B. Liverpool (Mr. John Husband, of the firm of Messrs. W. T. Husband & Son, of Liverpool; and Mr. George Lytton Cosgrove, of the firm of Messrs. Potter, Sandford & Cosgrove, of London), Geoffrey Hutchinson Crawford, B.A. Oxon (Mr. George Frederic Crawford, of Leeds; and Messrs. Patersons, Snow & Co., of London), Richard Burr Talbot Keen, B.A., LL.B. Cantab. (Mr. Charles Eliot Morier, M.A., LL.B., of the firm of Messrs. Wainwright & Co., of London), Herzl Segal, LL.B. Leeds (Mr. James Milner, LL.B., of the firm of Messrs. J. H. Milner and Son, of Leeds), Francis Hugh Lambart Wood (Mr. Ernest Lewin Chapman, of the firm of Messrs. Leman, Chapman and Harrison, of London).

THIRD CLASS.

(In alphabetical order.)

Henry Graham Barrow (Mr. Edgar Bold, LL.B., of the firm of Messrs. Brooks, Marshall, Moon & Co., of Manchester), Ashley Swinburne Baxter (Mr. William Howes Percival, of he firm of Messrs. Howes Percival & Budge, of Northampton), Tom Cecil Benfield (Mr. Howell Lang Lang-Coath, of Swansea), Ronald Henry Collingridge Bennett (Mr. Herbert Simpson, of the firm of Messrs. Herbert Simpson, Son & Bennett, of Leicester), Arthur Leslie Bostock, LL.B. London (Mr. Reuben Charles Bartlett, of the firm of Messrs. R. C. Bartlett & Co., of London), Ernest Brearley (Mr. Duncan Clerk Winter, LL.B., of the firm of Messrs. Land & Foster, of Halifax; and Mr. Ernest Victor Brown, of the firm of Messrs. Brown, Willatt & Marriott, of Nottingham), Reginald Fred Varney Britnell (Mr. James Edward Birtwell, of the firm of Messrs. Birtwells, of Burnley), Alec Clegg (Mr. Harry Ogden, of Burnley), Arthur Lindsay Clegg, B.A., B.C.L. Oxon. (Mr. William Abercromby, of the firm of Messrs. Radcliffe-Smith, Abercromby & Co., of Liverpool), Elwyn Talog Davies (Mr. Joseph Lloyd, of the firm of Messrs. Joseph Lloyd & Co., of Rhyl), William Ogilvie Dodd, LL.B. Liverpool (Mr. George Livsey, LL.B., of Wallasey; and Messrs. Chamberlain & Co., of London), Lindsay Stanley Fisher, B.A. Oxon. (Mr. Charles Stanley Fisher, O.B.E., of the firm of Messrs. T. F. Peacock, Fisher, Chavasse & O'Meara, of London), Ralph Freeman (Mr. Harry Bevan Wedgewood Foulger, of the firm of Messrs. Foulger, Robinson & Wilbraham, of London), Samuel Walker Garsed, B.A., B.C.L. Oxon. (Mr. David Garsed, LL.B., of Elland), John Hugh Cecil Godfrey (Mr. Wilfred Sigismund Rothera, of the firm of Messrs. Rothera, Sons & Husbands, of Nottingham), Ernest Harley Gough, B.A. Cantab. (Mr. Harold Moreton Moss, of Northwich), William Percy Hill (Mr. George Green, of Cradley Heath), Roden William James (Mr. Campbell Montague Edward Wynne, of the firm of Messrs. Capel Cure & Ball, of London) David Hubert John, LL.B. Wales (Mr. Walter Robert James, of the firm of Messrs. Lewis & James, of Narberth), Hywel Glynne Jones, LL.B. Wales (Mr. Cyril Oswald Jones, B.A., of the firm of Messrs. Cyril Jones & Williams, of Wrexham; and Mr. John Roberts, of the firm of Messrs. Jaques & Co., of London), Cecil Jack Lewis, B.A., LL.B. Cantab. (Mr. Edward John Stokes, of London), John Edward Lewis (Mr. Edward Roy Longcroft (deceased); and Mr. Charles Edward Beare Longcroft, both of Havant), Francis Arthur

Luke (Mr. Charles Edward Barry, of the firm of Messrs. Barry and Harris, of Bristol), Thomas George Lund (Mr. Richard Hodding Fox, and Mr. Archibald Fenwick Pollard, M.A., both of the firm of Messrs. Torr & Co., of London), Henry Thomas Mander, B.A., LL.B. Cantab. (Mr. Theodore Godlee, of the firm of Messrs. Mackrell, Maton, Godlee & Quincey, of London) John Barker Maudsley (Mr. Eustace Hazzel Vant, of Settle), William Moncur Mitchell, B.A., LL.B. Cantab. (Mr. Edmund Bascombe Mitchell, of the firm of Messrs. Mitchell, Lucas and Mitchell, of London), Ellis Ashby Needham, LL.B. Manchester (Mr. Thomas Ashby Needham, B.A., of Manchester), Ronald Illingworth Newell, LL.B. London (Mr. Samuel Harold Stead, of the firm of Messrs. Farrar, Stead & Co., of Bradford), Ernest William Johnston Nicholson (Mr. Parker Morris, of London, formerly of Chesterfield), Francis Joseph O'Dowd (Mr. Richard Harold Armstrong, of the firm of Messrs. Alsop, Stevens & Collins Robinson, of Liverpool), Harold Partington (Mr. Abram Cory Allibone, of Wakefield), Arthur Guyon Prideaux, B.A. Oxon. (Mr. William Arthur Bright, B.A., of the firm of Messrs. Alfred Bright & Sons, of London), Ralph Marcel Smith (Mr. Henry Russell Bazeley, B.A., of the firm of Messrs. Bazeley, Barnes and Bazeley, of Bideford; and Messrs. Gibson & Weldon, of London), David Lyndhurst Martin Steel (Mr. Edgar Robson Tanner, M.A., LL.B., of the firm of Messrs. Tanner & Clarke, of Bristol), Richard Home Studholme (Mr. Percy Colquhoun Atkins, B.A., LL.D., of the firms of Messrs. Kerly, Sons and Karuth, and Messrs. Nelson, Son & Plews; both of London), Eric John Temple (Mr. Frederick Wilson, of the firm of Messrs. Sedgwick, Turner, Sworder & Wilson, of Watford), Willie Tillotson (Mr. Samuel Sharpe Waterhouse, of Blackpool), Maurice Sherbrooke Turpin, B.A. Oxon. (Mr. Henry Thornton Locock, B.A., of the firm of Messrs. Osborne, Ward, Vassall, Abbot & Co., of Bristol), Donald William Wade (Mr. William Mercer Wade, M.A., LL.B., of the firm of Messrs. Booth & Co., of Leeds), Francis Gerald Walker, B.A. Cantab. (Mr. George Herbert Buchannan, of the firm of Messrs. Buchannan, Giles and Evans, and Mr. John Clare Gaskell, M.A., of the firm of Messrs. Williams, Gladstone & Gaskell; both of Cardiff), George Edward Walker, B.A., LL.B. Cantab. (Mr. James Smith, of the firm of Messrs. Rider, Heaton, Meredith & Mills of London), George Shorrock Ashcombe Wheatcroft, B.A. Oxon. (Mr. Alfred Herbert Holland, and Mr. George Edward Herbert Cook, B.A., both of the firm of Messrs. Corbin, Greener & Cook, of London), Godfrey Harlow Wigglesworth, B.A., B.C.L. Oxon. (Mr. Adam Fox, of the firm of Messrs. A. & G. W. Fox; and Mr. Francis William Wigglesworth, LL.B., of the firm of Messrs. Wigglesworth & Son, both of Manchester; and Messrs. Williamson, Hill & Co., of London). David Rees Williams (Mr. William Augustus Williams, of the firm of Messrs. Stockwood & Williams, of Bridgend; and Messrs. Wrentmore & Co., of London), David Ian Wilson, B.A. Oxon. (Mr. Frederick Ambrose Stapleton Gwatkin, of the firm of Messrs. McKenna & Co., of London), Norman Woods (Mr. Thomas Herbert Forshaw; and Mr. Arnold Kenneth Gornall, of the firm of Messrs. T. H. Forshaw & Co., both of Bolton), Lionel Richard Woolner (Mr. Stephen William Price, of the firm of Messrs. Samuel Price, Sons & Robertson, and Mr. Walter Ernest Newman, of the firm of Messrs. Newman, Paynter, Gould & Newman; both of London), Bernard Joseph Maxwell Wright, B.A. Cantab. (Sir Bernard Swanwick Wright, J.P., of the firm of Messrs. Bernard Wright & Cursham, of Nottingham).

The Council of The Law Society have accordingly given a class certificate and awarded the following prizes: To Mr. Weston: The Clement's Inn Prize, value about £42; to Mr. Lewis: The Daniel Reardon Prize, value about £21; to Mr. Place and Mr. Wechsler: Each The Clifford's Inn Prize, value £5 5s.

The Council have given class certificates to the candidates in the second and third classes.

One hundred and sixty-four candidates gave notice for examination.

The following candidates (whose names are in alphabetical order) were successful at the Preliminary Examination held on the 3rd and 4th July, 1929:—

Boris Altschuler, Thomas Armstrong, Thomas Henry Attwater, Henry Sykes Balls, Alan Bradley, Murray Bruce Brash, George Leslie Bridger, Henry Makepeace Brooks, John Michael Bryce-Smith, William Oscar Burn, Andrew Henry Knight Campbell, Richard Camrass, Francis Edward Carpenter, Gerald Frederick Chantler, William Edward Gerald Churcher, Kenneth Clews, John Charles Cowles, Alfred John Davis, Arthur Charles Davis, William Trevor Day, Terence Heath Dwyer, Gerald Arthur Ealand, Frederick Walter Edmonds, Havelock Winston Eginton, Norman Trevor Fedrick, Frank Arthur Campbell Fisher, William Foux, Lawrence John Frost, Leonard Vincent Fry, John Frederick Green, Stanley Vincent Hall, Phineas John Hands, Michael Talbot Harraway, Edward Helm, Frank Hill, Robert Francis Hills, William Francis Horton, Arthur Stanley Johnson, Herbert Vincent Jones, Eric Laycock, Alan Guy Fishwick Leather, Edward Robert James Leggett, John William Mead, Ronald Leslie Meech, Stanley Milnes, James Gabriel Mitchell, Ronald Llewelyn Morgan, Bernard George Dealtry Nathan, Henry Kenneth Newcombe, George John Paddock, Mary Wylie Patterson, John Musgrave Peck, Christopher George Henry Perks, Ivor Davies Pugh, Herbert Malcolm Rix, William Owen Robyns, Norman Frank Rosier, George Hansel Sykes Routledge, Henry Peter Ryland, Derek Oakley Siddons, Derrick Sloan, George Alfred Smith, Reginald William Arthur Smith, Walter Mervyn Wadham Smith, Reginald Henry Don Sparrow, Conway William Stidson-Broadbent, Ernest Sumner, Norman Lewis Swain, Richard Anthony Conolly Tunnard, William Hilton Waddington, John Eldon Walker, Bernard William Wallace, Brian Trevor Wellington, Jerome Bernard Whelan, Wilfred Thomson Whitlaw, Edward Basil Wight, Richard Eyton Williams, William Rhodes Wooldridge, Philip Richard Thomas Wright.

No. of Candidates, 164. Passed, 79.

Gray's Inn.

Sir Miles Mattinson, K.C., and Sir Lewis Coward, K.C., were entertained in Gray's Inn Hall on Friday, the 19th ult., at a house dinner given in recognition of their services to the Society of Gray's Inn during a period of nearly forty years following their election to the Bench.

Sir Miles Mattinson was chairman of the finance committee from 1893 to 1923 and Sir Lewis Coward was chairman of the house committee for the same period. At the opening of the new library of Gray's Inn on Thursday, Lord Merrivale stated in his speech that the prudence and wise counsel of these two Masters of the Bench had placed the Society in a position to provide a new library building, and the house dinner in fact formed part of the celebrations attending the completion of that enterprise.

The Treasurer, Mr. Timothy Healy, K.C., presided at the dinner and proposed the toast "Master Sir Miles Mattinson and Master Sir Lewis Coward." Lord Birkenhead supported the toast and the two Benchers replied. The toast of "The Treasurer" was proposed by Master Lord Merrivale.

Dinner was served both in the hall and in the gallery, every available seat being occupied.

The following Masters of the Bench were present in addition to the Treasurer and those already named: The Right Hon. Sir Dunbar Plunket Barton, Bart., K.C., Mr. Edward Clayton, K.C., The Right Hon. Lord Atkin, The Right Hon. Sir William Byrne, K.C.V.O., C.B., Sir Montagu Sharpe, K.C., The Right Hon. Lord Justice Greer, His Honour Judge Herbert Smith, His Honour Judge Ivor Bowen, K.C., The Right Hon. Mr. Justice Duff, Sir Alexander Wood Renton, K.C.M.G., K.C., Sir Cecil Walsh, K.C., Mr. R. E. Dummett, The Hon. Vice-Chancellor Courthope Wilson, K.C., Sir Walter Greaves-Lord, K.C., M.P., Mr. G. D. Keogh, Mr. Bernard Campion, K.C., Mr. J. W. Ross-Brown, K.C., Mr. Frederick Hinde, Mr. R. Storry Deans, Mr. A. Andrewes Uthwatt, Mr. Malcolm Hilbery, K.C., with the Preacher (The Rev. W. R. Matthews, D.D.) and the Under-Treasurer (Mr. D. W. Douthwaite).

Manchester Law Society.

Presiding at the annual meeting of the Manchester Law Society, held on Tuesday 23rd July, at the Law Library, Mr. W. E. M. Mainprice, the President, referred to the fact that a scheme for the provision out of joint contributions to be made by solicitors and their clerks to a fund to provide pensions for the clerks had originated from the Council of The Law Society. The scheme was similar to a scheme adopted in connection with the pension fund for the benefit of the Stock Exchange clerks, its object being to provide pensions for male clerks at the age of sixty-five and female clerks at the age of sixty. Subscriptions to the fund would be entirely voluntary both on the part of the employer and the clerk. If the scheme became an established fact it was advisable that all the young solicitors' clerks should contribute to the fund at the earliest possible date as if it met with general support it was likely that in a short time no responsbile firm or employer would take a clerk of over a certain age who was not or would not become a contributor. A special committee of the Society had approved the scheme in principle and had recommended that the views of the members of the Society should be ascertained. It might be that the scheme was more suitable to the requirements of the larger firms practising in London; the scheme, however, was being proceeded with, and following a meeting of the Council of

The Law Society on Friday 19th July it was resolved that the scheme be referred back to the Committee responsible for it, and that five representatives of the clerks be co-opted on the committee with a view to the consideration of certain amendments and additions to the trust deed. When the trust deed had been amended it would be again submitted to the provincial society.

During the past year the Companies Act of 1929, which was an important Act, had been placed on the Statute Book. All the provisions of the Act had not yet come into force, but it would contain a code relating to the formation and administration of the affairs of all companies who registered in England and Scotland and certain of its provisions would also apply to companies incorporated by Act of Parliament or Royal Charter and foreign companies. Another Act which had been passed and was of great importance to Solicitors and especially to those interested in local government affairs, was the Local Government Act of 1929.

During his term of office he had had the opportunity of listening to a number of interesting speeches on the subject of arbitration regarded from the arbitrator's point of view. The Arbitration Tribunal of the Manchester Chamber of Commerce had done work which had been of very great value to the trading community of Manchester and the surrounding neighbourhood.

The past year had been a peaceful and he hoped a successful one for the Society. They had, however, to regret the loss of several members through death, which they very much deplored.

As they all knew, Mr. Atkinson, who had acted as their Honorary Secretary for the past eleven years, had retired from the office, and it was his very pleasant duty to present to him on behalf of the members a set of cut glass table ware. Mr. Atkinson, he said, had rendered admirable service to the Society and the Council during his term of office, and in making the presentation he did so with the greatest possible goodwill and heartfelt thanks for his services. Mr. Atkinson, responding, said it had been a delight to him to work with the Council, and in accepting the presentation he appreciated the kind thoughts which he knew accompanied it as it was symbolical of the appreciative spirit of the Council of the Society for which he had been working for a good number of years, during which time he had made many friendships.

The following officers were elected: President, Mr. Kenneth H. Atkinson; Vice-President, Mr. F. S. Stancliffe; Hon. Treasurer, Mr. Adam Fox; Hon. Secretary, Mr. A. H. Goulty.

Long Vacation, 1929.

NOTICE.

During the Vacation, up to and including Thursday, 5th September, all applications "which may require to be immediately or promptly heard," are to be made to The Hon. Mr. Justice LUXMOORE.

COURT BUSINESS.—The Hon. Mr. Justice LUXMOORE will, until further notice, sit in The Lord Chancellor's Court, Royal Courts of Justice, at half-past 10 on Wednesday in each week commencing on Wednesday, 7th August, for the purpose of hearing such applications of the above nature, as, according to the practice in the Chancery Division, are usually heard in court.

PAPERS FOR USE IN COURT.—CHANCERY DIVISION.—The following Papers for the Vacation Judge are required to be left with the Cause Clerk in attendance at the Chancery Registrars' Office, Room 136, Royal Courts of Justice, on or before 1 o'clock, two days previous to the day on which the application to the Judge is intended to be made:—

1.—Counsel's certificate of urgency or note of special leave granted by the Judge.

2.—Two copies of notice of motion, one bearing a 5s. adhesive stamp.

3.—Two copies of writ and two copies of pleadings (if any).

4.—Office copy affidavits in support, and also affidavits in answer (if any).

No Case will be placed in the Judge's Paper unless leave has been previously obtained or a Certificate of Counsel that the Case requires to be immediately or promptly heard, and stating concisely the reasons, is left with the papers.

N.B.—Solicitors are requested when the application has been disposed of, to apply at once to the Judge's Clerk in Court of the return of their papers.

URGENT MATTERS WHEN THE JUDGE IS NOT PRESENT IN COURT OR CHAMBERS.—Application may be made *in any case of urgency*, to the Judge personally (if necessary), or by post or rail, prepaid, accompanied by the brief of Counsel, office copies of the affidavits in support of the application, and also by a Minute, on a separate sheet of paper, signed by Counsel, of the order he may consider the applicant entitled to, and also an envelope, sufficiently stamped, capable of receiving the papers, addressed as follows:—"Chancery Official Letter: To the Registrar in Vacation, Chancery Registrars' Office, Royal Courts of Justice, London, W.C.2."

The address of the Vacation Judge can be obtained on application at Room 136, Royal Courts of Justice. Vacation Registrar.—Mr. RITCHIE (Room 188).

CHANCERY CHAMBER BUSINESS.—The Chancery Chambers will be open for Vacation business on Tuesday, Wednesday, Thursday and Friday in each week, from 10 to 2 o'clock.

KING'S BENCH CHAMBER BUSINESS.—The Hon. Mr. Justice LUXMOORE will sit for the disposal of King's Bench Business in Judge's Chambers at 11 a.m. on Tuesday in each week.

PROBATE AND DIVORCE.—Summonses will be heard by the Registrar, at the Principal Probate Registry, Somerset House, every day during the Vacation at 11.30 (Saturdays excepted).

Motions will be heard by the Registrar on Wednesdays, the 14th and 28th August, and the 11th and 25th September, at the Principal Probate Registry at 12.15.

Decrees will be made absolute on Wednesdays, the 7th and 21st August, the 4th and 18th September and the 2nd October.

All Papers for making Decrees absolute are to be left at the Contentious Department, Somerset House, on the preceding Thursday, or before 2 o'clock on the preceding Friday. Papers for Motions may be lodged at any time before 2 o'clock on the preceding Friday.

The Offices of the Probate and Divorce Registries will be opened at 10 a.m. and closed at 4 p.m., except on Saturdays, when the Offices will be opened at 10 a.m. and closed at 1 p.m.

Legal Notes and News.

Resignations.

Mr. JOHN FARDELL, solicitor, has resigned his appointment of Clerk of the County Justices of the Isle of Wight Division, in which appointment he succeeded his father just over thirty years ago. Mr. Fardell, who was admitted in 1887, also holds the appointments of Registrar of the County Courts of Newport and Ryde and District Registrar of the High Court, Clerk to the Ryde Borough Justices and Clerk to the Commissioner of Taxes.

Professional Partnerships Dissolved.

SHELTON & Co., Solicitors, 47, Queen-street, Wolverhampton, and ARTHUR FORESTER WALKER and ANDREW HAY BIKKER, 3, New Court, Lincoln's Inn, by mutual consent as from 30th April. The business will be carried on by A. H. Bikker, A. S. Wearing and H. T. B. Mimpriss, at Wolverhampton, and by A. H. Bikker and H. T. B. Mimpriss at New Court, Lincoln's Inn.

WILLIAM BYGOTT and EUSTACE DOUGLAS VALE, Solicitors, Rayleigh, Wickford and Hockley, Essex (Bygott & Vale), by mutual consent as from 6th July. W. Bygott will continue to carry on the business under the name of William Bygott.

Wills and Bequests.

Mr. George Turner, O.B.E., J.P., M.A., barrister-at-law, of Bateman-street, Cambridge, left estate of the gross value of £12,039.

Mr. Arthur N. Waterman, retired solicitor, formerly of Guildford, left estate of the gross value of £167,302, with net personalty £164,375.

Mr. Henry Harrison Handcock, Solicitor, of The Pryors, East Heath-road, Hampstead, N.W., left estate of the gross value of £14,564.

Mr. Joseph Emile Patrick McMaster, of Afton Bank, Freshwater, Isle of Wight, barrister-at-law, a member of the first English cricket team to visit South Africa in 1888, who died in London on 7th June, left estate of the gross value of £34,610, with net personalty £34,266.

Mr. George Hawkins Hext, Solicitor, of Kingstone, Newton Abbot, left estate of the gross value of £7,546.

Mr. Frederick Turner Bloxam, of Kensington Court-gardens, Kensington, W., Chief Registrar of the Chancery Registrars' Office, who died on 2nd April, aged sixty-eight, left £12,260 gross, with net personalty £11,646.

STUDENT'S CLAIM AGAINST PROFESSOR.

ACTION FOR DAMAGES DISMISSED ON APPEAL.

An appeal from the Sheriff in Aberdeen to the Court of Session in Edinburgh in an action by Lewis Coutts, formerly a student in Aberdeen University, against Professor Adolphus Alfred Jack, of the Chair of English Literature at Aberdeen, claiming £5,000 damages was disposed of by the First Division of the court recently. The claim was for alleged wrongful refusal to allow the plaintiff to attend the Honours English Class at Aberdeen.

The Sheriff held that the defendant was not liable to the plaintiff in reparation, and the Appeal Court affirmed the decision.

The Lord President said it was quite plain that an attack upon Professor Jack based upon malice or oblique motive failed for want of proof. It was also impossible to hold that the plaintiff's academical career was brought to a close by Professor Jack's declining to allow him to attend his class, and impossible that the plaintiff could recover any damages for anything of which he complained as truly attributable to anything that Professor Jack did.

In a reference to the regulations of Aberdeen University his lordship said the more he had seen of the regulations the less he liked them. He could imagine no more damning criticism upon them than the fact that neither the plaintiff nor the Professor knew what they were until months after the incidents in question.

TO STUDY THE ENGLISH LEGAL SYSTEM.

Just five years since the great meeting of lawyers of the American Bar Association in London, a party of over fifty judges and attorneys from the Middle West of the United States has arrived in England to study the methods of the English legal profession and court procedure. The party crossed the Atlantic, says *The Times*, at the invitation of the Lord Chancellor, and will later proceed to the Continent. Many of the visitors brought their families, and in all the party numbered 160.

They were addressed on Saturday, the 20th ult., at the Middle Temple, which has been more closely linked with the English-speaking community in the United States than any of the other Inns since the early days of the American colonies, by Mr. Bruce Williamson, author of the history of the Temple, and a Bencher of the Middle Temple. He explained the place of the Inns of Court in the English legal system.

Judge Holman Gregory, K.C., who presided, said that history showed that members of the Inn had succeeded in taking an active part in the world. The spirit and the atmosphere of the Elizabethan hall conveyed an influence that older people like himself believed was valuable to those that would follow them. Students, before being called to the Bar, had to dine there regularly, and they became infused with the traditions that surrounded them.

A visit to the Temple Church and other historic spots within the Temple precincts followed, and later in the day the party went to Runnymede to see the meadow where King John sealed Magna Charta.

On Monday Mr. Campbell Lee (the organiser) of the New York and English Bars, conducted the visitors to places of legal interest, and later they visited the Court of Criminal Appeal and Mr. Justice Horridge's Court. On Tuesday, Sir Roger Gregory gave an address at The Law Society's Hall, on "The work of a Solicitor," with the President of The Law Society (Mr. W. H. Forster) in the chair; and on Wednesday Mr. H. du Parcq, K.C. (the Recorder of Bristol) and Mr. A. F. Clements (the Recorder of Tewkesbury) gave addresses at the Middle Temple Hall on the work of a King's Counsel and Junior Counsel respectively. Visits were also paid to the sittings of the various courts during the week.

The party included :—The Hon. Truman S. Stevens, Chief Justice of Iowa ; The Hon. E. E. Good, Justice of the Supreme Court of Nebraska ; The Hon. Ray E. Stevens, Justice of the Supreme Court of Wisconsin ; The Hon. Robert E. Hefner, Justice of the Supreme Court of Oklahoma ; The Hon. James Brown, Judge of the Supreme Court of South Dakota ; The Hon. S. M. Ladd, former Justice of Iowa Supreme Court ; The Hon. H. H. Carter, Judge of Iowa District Court ; The Hon. E. B. Perry, former Judge of Nebraska District Court ; The Hon. O. J. Henderson, Judge of Iowa District Court ; The Hon. W. P. Launtz and The Hon. E. C. Bland, Justices of Missouri Court of Appeals ; and the following Attorneys :—The Hon. Allen Burch, Kansas ; The Hon. K. Forest, Kansas ; The Hon. Thomas J. Dredla, Nebraska ; The Hon. Lloyd H. Jordan, Nebraska ; The Hon. John Pew, Kansas City ; The Hon. W. L. Roos, St. Louis ; and Miss Vita Maguire, Chicago.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (7th February, 1929) 5½%. Next London Stock Exchange Settlement Thursday, 15th August, 1929.

	Middle Price 31st July	Interest Yield.	Yield with Redemption.
English Government Securities.		£ s. d.	£ s. d.
Consols 4% 1957 or after	82	4 17 7	—
Consols 2½%	54	4 12 7	—
War Loan 5% 1929-47	100¾	4 19 3	—
War Loan 4½% 1925-45	94½	4 15 3	5 0 0
War Loan 4% (Tax free) 1922-42	100¼	3 19 10	4 0 0
Funding 4% Loan 1960-1990	85	4 14 2	4 15 0
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years	91	4 7 11	4 10 0
Conversion 4½% Loan 1940-44	94½	4 15 3	5 0 0
Conversion 3½% Loan 1961	74	4 14 7	—
Local Loans 3% Stock 1912 or after	61½	4 17 7	—
Bank Stock	244	4 18 4	—
India 4½% 1950-55	86½	4 0	5 9 6
India 3½%	64½	5 8 6	—
India 3%	55½	5 8 1	—
Sudan 4½% 1939-73	92	4 17 10	4 19 0
Sudan 4% 1974	84	4 15 3	4 17 6
Transvaal Government 3% 1923-53 (Guaranteed by British Government, Estimated life 15 years)	82	3 13 2	4 4 0
Colonial Securities.			
Canada 3% 1938	85	3 10 7	5 2 0
Cape of Good Hope 4% 1916-36	93	4 6 0	5 4 0
Cape of Good Hope 3½% 1929-49	80	4 7 6	5 2 0
Commonwealth of Australia 5% 1945-75	96½	5 3 8	5 4 0
Gold Coast 4½% 1956	94	4 15 9	4 18 0
Jamaica 4½% 1941-71	94	4 15 9	4 17 0
Natal 4% 1937	93	4 6 0	5 4 0
New South Wales 4½% 1935-45	89	5 1 2	5 11 0
New South Wales 5% 1945-65	96	5 4 2	5 5 0
New Zealand 4½% 1945	95	4 14 9	4 19 6
New Zealand 5% 1946	100	5 0 0	5 0 0
Queensland 5% 1940-60	96	5 4 2	5 5 0
South Africa 5% 1945-75	100	5 0 0	5 0 0
South Australia 5% 1945-75	96	5 4 2	5 4 6
Tasmania 5% 1945-75	96	5 4 2	5 4 6
Victoria 5% 1945-75	96	5 4 2	5 4 6
West Australia 5% 1945-75	96	5 4 2	5 4 6
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corporation	60	5 0 0	—
Birmingham 5% 1946-56	100	5 0 0	5 0 0
Cardiff 5% 1945-65	101	4 19 0	4 19 0
Croydon 3% 1940-60	69	4 6 11	4 18 6
Hull 3½% 1925-55	76	4 12 1	5 4 0
Liverpool 3½% Redeemable by agreement with holders or by purchase	70	5 0 0	
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	52½	4 15 3	—
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	61¾	4 17 2	—
Manchester 3% on or after 1941	60	5 0 0	—
Metropolitan Water Board 3% 'A' 1963-2003	63	4 15 0	—
Metropolitan Water Board 3% 'B' 1934-2003	64	4 13 9	—
Middlesex C. C. 3½% 1927-47	81	4 6 5	5 2 6
Newcastle 3½% Irredeemable	70	5 0 0	—
Nottingham 3% Irredeemable	60	5 0 0	—
Stockton 5% 1946-66	100	5 0 0	5 0 0
Wolverhampton 5% 1946-56	100	5 0 0	5 0 0
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture	78¼	5 1 11	—
Gt. Western Rly. 5% Rent Charge	96	5 4 2	—
Gt. Western Rly. 5% Preference	91½	5 9 3	—
L. & N. E. Rly. 4% Debenture	74	5 8 1	—
L. & N. E. Rly. 4% 1st Guaranteed	71	5 12 8	—
L. & N. E. Rly. 4% 1st Preference	64	6 5 0	—
L. Mid. & Scot. Rly. 4% Debenture	76½	5 4 7	—
L. Mid. & Scot. Rly. 4% Guaranteed	75	5 6 8	—
L. Mid. & Scot. Rly. 4% Preference	68	5 17 8	—
Southern Railway 4% Debenture	76¼	5 4 7	—
Southern Railway 5% Guaranteed	97	5 3 0	—
Southern Railway 5% Preference	86	5 16 3	—

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